

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Wesley L. Givers

294844

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-against-

See Attached

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Complaint for Violation of Civil Rights

(Prisoner Complaint)

Case No. C/A NO 9:20-3554-DCC-MHC
(to be filled in by the Clerk's Office)

Jury Trial: ☒ Yes ☐ No
(check one)

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NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

When submitted for filing, your complaint should be accompanied by the full filing fee or an application to proceed in *forma pauperis*.

Complaint for violation of Civil Rights

1) Deputy Warden John Palmer ID# 050210

2) Captain Daniel Harouff ID# 034018

3) LT. Burzinski ID# 049940

4) Sgt. K. Lave now a LT. of night shift

5) Sgt. Lite

6) Sgt. Kayala Shervy ID# C062010

7) Officer Portier ID# 063049

8) Officer McCuen ID# 064257

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Wesley L. Givens

All other names by which you have been known:

ID Number

#294844

Current Institution

Perry C.F.

Address

430 Oaklawn rdPelzer S.C 29669**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Job or Title
(if known)Deputy Warden Overseer of Restorative Housing Unit

Shield Number

ID# 050210

Employer

South Carolina Dept of Corrections

Address

430 Oaklawn rdPelzer, S.C 29669

Individual capacity



Official capacity

Defendant No. 2

Name

Captain Daniel Harowitz

Job or Title (if known) Cpt on Restrictive Housing Unit D-Dorm
 Shield Number ID# 034010
 Employer South Carolina Dept of Corrections
 Address 430 Oaklawn rd
Pelzer S.C 29669

☒ Individual capacity ☒ Official capacity

Defendant No. 3

Name LT. Buzinski
 Job or Title (if known) LT on Restrictive Housing Unit
 Shield Number ID# 049940
 Employer South Carolina Dept of Corrections
 Address 430 Oaklawn rd
Pelzer S.C 29669

☒ Individual capacity ☒ Official capacity

Defendant No. 4

Name Sgt. K have now a Lt. on night shift
 Job or Title (if known) LT on Restrictive Housing Unit
 Shield Number Unknown
 Employer South Carolina Dept of Corrections
 Address 430 Oaklawn rd
Pelzer S.C 29669

☒ Individual capacity ☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

The Parties to this Complaint

Defendant no. 5

Name Kayala Shervey
 Job/Title Sgt of Restrictive Housing Unit
 (if known)
 Shield Number ID# C602010
 Employer South Carolina Dept of Corrections
 Address 430 Oaklawn Rd
Pelzer, S.C 29669
☒ Individual Capacity ☒ Official Capacity

Defendant no. 6

Name Officer Poitevien
 Job/Title Officer of Restrictive Housing Unit
 (if known)
 Shield Number ID# D63849
 Employer South Carolina Dept of Corrections
 Address 430 Oaklawn Rd
Pelzer, S.C 29669
☒ Individual Capacity ☒ Official Capacity

Defendant no. 7

Name Sgt. Lile
 Job/Title Sgt at Pelzer C.I. / Restrictive Housing Unit
 (if known)
 Shield Number Unknown
 Employer SCDC / South Carolina Dept of Corrections
 Address 430 Oaklawn ~~Blvd~~ Rd
Pelzer S.C 29669
☒ Individual Capacity ☒ Official Capacity

Defendant no. 8

Name Officer McCuen * (Resigned)
 Job/Title Officer Restrictive Housing Unit
 (if known)
 Shield Number ID# D64257
 Employer South Carolina Dept of Corrections
 Address 430 Oaklawn Rd
Pelzer S.C 29669

A. Are you bringing suit against (check all that apply):

- ☒ (LSP) Federal officials (a *Bivens* claim) (Using both) ☒
☒ (LSP) State or local officials (a § 1983 claim) ☒

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

5th Amendment, medical, food, Mattress, Blanket, socks & Bowers
sheets, Dental, Right to have Policy/Procedures enforced, to speak
to Attorney, 1st Amendment, Safety/Security of SCDC.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

1st, 2nd, 8th, 14th. Amendments.

D. Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

~~Defendant~~ Attached sheet

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
☐ Civilly committed detainee
☐ Immigration detainee

Answer to question 2:

Deputy Warden John Polizzi - Acted with Negligence, violation of 5th and 8th Amendment, Breach of Code, Misconduct in office, Deliberate Indifference with (Wanton), Prejudice, Racial Profiling, Act of Retaliation, Intentional Infliction of Emotional Distress, violation of state rules/policies, Excessive use of force, Corporal Punishment violation of SCDC 22.38, 22.11, 22.15. Damages.

Captain Daniel Haroutt - Same as Above...

LT. Burzynski - Purjury, excessive use of force, violation of State Rules/Policies, Misconduct in offices, Breach of Code, Intentional Infliction of Emotional Distress, Act of Negligence, violation of 1st, 5th, 8th Amendment, Damages.

LT. LAURE was a Sgt Aug 27, 2020 - Sexual Assault & Battery, Physical Assault & Battery, Act of Retaliation, Act of Prejudice, Misconduct in office, Breach of Code, Intentional Infliction of Emotional Distress, violation of state rules/policies, Excessive use of force, Corporal Punishment, Deliberate Indifference with Wanton, Damages.

Sgt Laite - Same As Above for LT LAURE

Sgt Kujala Shervy - Same As Above for LT. LAURE

Officer Portavien - Same As Above for LT. LAURE

Officer McQueen - Same As Above for LT. LAURE

- ☒ Convicted and sentenced state prisoner
☐ Convicted and sentenced federal prisoner
☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

*Perry Correctional Institution - main gate, D-Door -
 medical and dining room #18/hallway*

- C. What date and approximate time did the events giving rise to your claim(s) occur?

Between 7:30pm - 9:30pm Aug 27, 2020

- D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

Attached Document

on August 27, 2020 I Arrived at Perry CI on the van once at Maringate I was approach by 8 to 12 Perry officer Deputy Warden John Palmer being the first, in which he stated I was still a asshole when I asked did he still work at Perry in during so Sgt Love who's now a LT, stated do you remember me I stated no due to the fact the All had on (Riot Gear) Black All over for just Me at this time Approx Between 7:30^{pm} to 8:30^{pm} I was spat out the van the Back portion in face restraints ending face first cracking teeth and scaring right side of my face. 3 nurses were getting off Mrs. Hernandez and 2 other nurses that could be seen leaving on that day on Perry Institutional Carrera. I was then spat out up off the ground by restraints told to Walk to D-Down which quarter mile or more being pushed by Sgt Lite and LT Love whom use to be a Sgt. Leg Trops Cutting into my Ankle. once I Arrived to D-Down face was slammed against door glass picked up slammed in full restraints by LT. Burzinski, LT/Sgt Love, Sgt Lite, Officer Portier, Officer McEwen while Cpt Haroff and Deputy Warden John Palmer Watched. I was picked up by Restraint Cutting into Skin (Hard Restraints) Carried to Medical Drop on the floor in which the George Floyd position was Applied on stomach, on neck, on shoulder stopping breathing "I stated I Can't Breathe" at this time I was denied Medical. spat out up by restraints Carried down D-Down 4 wing in front 4-18 where several inmates screamed why you doing that man like that he didn't do anything that's when Deputy Warden John Palmer he did nothing this time it's from last year you keep talking you next at this time my thermal, uniform, shoes, had been removed by being put off I was pick up in Boxer slammed on concrete slabs head forced Against the concrete where I heard Sgt Lite and LT/Sgt Love discussing who was going to (spread my butt) to look if anything was in it. At this time a finger was placed in the Crack of my Butt spread while everyone else look on the use of force Carrera was to be on the entire time but Sgt. Sperry Walked away when I started saying get your hand off my butt I was then kneed, punched, spat out up to have another strip search at door. my Boxers were taken left in room with nothing completely naked. Also denied Medical treatment force to Walk Around my Cell and talk to inmates for Comfort.

Nurse Hedgecock - work nights

Witness: Nurse Hernandez - Resigned

Michael Arnold - Max out soon

Durquarous Davis - # 364690

Brian Barris -

Institutional Camera

Also Agent James from Police Service

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

*Slammed on my face and shoulder, teeth chipped
shoulder/back pain chronic) Pick-up by restraints leaving
Scars on wrist/Ankles. Struck on me due to Sexual
Assault/Battery. Denied Medical Attention on that day seen
(approx) Aug 29 or 30, 2020 I believe. Mental Trauma, Depression,
Down on Mental Health taking Mental Medication. I required
X-Ray, CT scans, Area treatment.*

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

*I Want Criminal charges on Each officer. Officer to be
fired, Prosecution of ~~Disrespectful~~ Administration. I Request
250,000 for pain and suffering: Scars, trauma, mental anguish
Shoulder, Sexual and physical Assault, ~~Sexual Assault~~, Teeth,
Back Pain (chronic) denial of Medical treatment sleeping on concrete noted-
Need to see spine Doctor/therapy*

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Perry Correctional Institution

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☐ No

☒ Do not know

If yes, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

- ☐ Yes
☐ No

E. If you did file a grievance:

1. Where did you file the grievance?

Perry Correctional Institution

2. What did you claim in your grievance?

Everything that took place, what policy violated dates, time, as far as what action requested.

3. What was the result, if any?

Warden stated be responsible for words and actions so I wrote the Court.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

1st Appeal process given, I wrote the South Carolina Supreme they wrote the Director Brian Stirling he contacted General Counsel who contacted Perry C.I. in which nothing happened, acts of Retaliation.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

I did No Response As of 01-19-2021
Incident 03-27-2020

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

Warden Williams, Warden Earle, Warden Duffie,
Police Service, Grievance people, South Carolina Supreme
Court

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

~~Police~~ Police Service notified through Star 22 spoke
to investigator Targos (female) Nothing done since Aug 27
2020 But Retaliation. Also Warden, Director through Court, Capt Harrell.
 (Note: You may attach as exhibits to this complaint any documents related to the
 exhaustion of your administrative remedies.) [Attached behind page #9]

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

- ☐ Yes
☒ No

Continuance for question G

Spoke to investigator Carter who was an officer at Perry worked with all officials tried to get me to stop filing paper in supposed to be a Confidential meeting with me and him come to find Chandler Controband officer was sitting in a room attached to investigator office. Once that was witnessed contact Supreme Court again filed grievance haven't heard anything Perry tries to keep everything in house.

W

W

W

W

If so, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

Still Pending (just started)

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

☒ Yes

~~☐ No~~ Yes

- D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) Wesley L. Givens

Defendant(s) Attached sheet

2. Court (if federal court, name the district; if state court, name the county and State)

United States District Court of South Carolina

3. Docket or index number

C/A No 9:20-3666-DCC-MHC

4. Name of Judge assigned to your case

Magistrate Judge Molly H. Cherry

5. Approximate date of filing lawsuit

11/19/2020

6. Is the case still pending?

☒ Yes

☐ No

Question Page # 11 Section D

- 1) Warden Charles Williams
- 2) Acting Warden Carter Earlie
- 3) Associate Warden Susan Duffie/Duffy
- 4) Major Bennett ID# C028532
- 5) Deputy Warden John Palmer ID# D50210
- 6) Captain Daniel Harvatt ID# 034018
- 7) LT. Lowe was a Sgt
- 8) Officer Portevien ID# 063849
- 9) Nurse A. Green Harvatt (Cpt Harvatt wife)
- 10) Mail clerk Ms. Merchapt

If no, give the approximate date of disposition. _____

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

Still Pending just started.

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: _____, 20__.

Signature of Plaintiff Wesley L. Givens
 Printed Name of Plaintiff Wesley L. Givens
 Prison Identification # #294844
 Prison Address Perry Correctional Institution
Pelzer S.C. 29669
 City State Zip Code

B. For Attorneys

Date of signing: _____, 20__.

Signature of Attorney _____
 Printed Name of Attorney _____
 Bar Number _____
 Name of Law Firm _____